

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTOR(S) : Benco et al.

TITLE : **NETWORK SUPPORT FOR GRADUATED
AIRTIME BILLING**

APPLICATION NO. : 10/752,050

FILED : January 6, 2004

CONFIRMATION NO. : 6126

EXAMINER : LAI

ART UNIT : 2617

ADVISORY ACTION : April 8, 2008

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

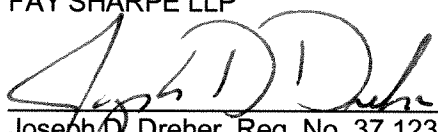
Dear Sir:

The Applicants request Pre-Appeal Brief Review of the final rejection mailed February 6, 2008, regarding the above-identified patent application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The Applicants respectfully submit the following 5 pages including reasons for requesting a Pre-Appeal Review of the above-captioned matter.

Respectfully submitted,

FAY SHARPE LLP

May 6, 2008
Date


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Date: <u>May 6, 2008</u>	Name: Mary Ann Temesvari

The Present Application - The attention of the reviewers is directed to the summary of the present application provided on page 18 of Applicants' Amendment B (After Final), which was submitted to the Office on March 18, 2008 ("Amendment B").

Briefly, the present application is related to systems and methods for providing network support for graduated airtime billing. Where prior art systems charge a high rate for airtime in excess of a subscriber's calling plan limits, the subject matter of the present application provides means for charging progressively lower rates. Moreover, the present application provides means for rewarding customer loyalty by providing increased discounts based on a time period the subscriber **has been** a customer.

The Cited Documents - The claims of the present application stand rejected in light of various combinations of up to four of a pool of five cited documents. Call Center Plus (**CCP**), **Money** and **Dahm** were first cited in the first Office Action. **Whewell** and **Ruckart** were first cited in the second and final Office Action.

CCP is a pricelist for an answering service and does not fairly disclose a method or a system. Moreover, CCP does not disclose or suggest a method or system for charging for airtime. The attention of the viewers is directed to CCP and/or the summary thereof provided at the bottom of page 20 and first portion of page 21 of Amendment B.

Dahm allegedly discloses a system and method that allows mobile subscribers who have been identified as being **likely candidates for churning**, to efficiently, visually and interactively, **review an offer** for a mobile service plan better meeting the subscriber's needs (Abstract). Dahm does not disclose or suggest a method for charging a subscriber for airtime that includes, for example, determining a first reference billing rate for a first category of airtime; determining a first threshold airtime amount for the first category of airtime; determining a quantity of first category airtime consumed by the subscriber; determining a first discounted billing rate for the first category of airtime that is less than the first reference rate based on a function that at least one of rewards customer loyalty and encourages subscription to higher cost subscription plans and charging the first discounted billing rate for at least some first category airtime consumed by the subscriber in excess of the first threshold airtime amount, as recited in **claim 1**, even in combination with the answering service pricelist of CCP and assertions of the Office Action to the contrary represent **clear errors**. **Dahm** is further discussed toward the top of page 21 of Amendment B. The attention of the reviewers is directed thereto.

Money allegedly discusses a service agent that can allegedly receive a request to establish a communications session between a communicative entity and another communicative entity. Allegedly, the agent can detect a transition from a first billing mode to a second billing mode and prompt a communicative entity for an authorization to transfer from the first billing mode to the second billing mode (Abstract). It is respectfully submitted that Money does not discuss the same systems and methods as are disclosed and claimed

in the present application. **Money** is further discussed on pages 16 and 17 of Applicants' Amendment A, which was mailed November 12, 2007.

The newly cited documents, **Whewell** and **Ruckart** and clear errors of the Office Action associated therewith, are summarized on pages 18-20 of Amendment B.

Briefly, the Office Action relies on **Whewell** for disclosure of the subject matter recited in **claims 3, 9, 22, 28** and **36**. With regard to **claims 3, 9, 22** and **28**, the Office Action provides an improper omnibus rejection (see page 9) in which the Office Action stipulates that CCP does not disclose and by its reliance on Whewell stipulates that Dahm does not disclose the subject matter of these claims. However, the Office Action does not even assert that Whewell discloses the subject matter of the claims. Instead, the Office Action asserts that Whewell discloses other things (see page 9 of the Office Action). Even if this could be construed as an assertion that Whewell discloses the subject matter of **claim 3**, this is clearly not an assertion that Whewell discloses charging a flat fee for a second category airtime consumed by the subscriber up to the second category first threshold airtime amount, as recited in **claim 9**. Moreover, Whewell does not provide such a disclosure. Furthermore, **claim 22** recites a "means for charging". Accordingly, 35 USC §112, sixth paragraph, applies and Whewell does not disclose or suggest the means for charging a flat fee for first category airtime consumed by the subscriber up to the first threshold airtime amount that is disclosed and recited in **claim 22**. Furthermore, Whewell clearly does not disclose or suggest the means for charging a flat fee for second category airtime consumed by the subscriber up to the second category first threshold airtime amount recited in **claim 28** or the graduated biller recited in **claim 26**.

Ruckart allegedly discloses methods and systems for offering bundled goods and services (Title). Even though the present application is unrelated to bundling, the Office Action cites portions of Ruckart in an attempt to explain the rejections of **claims 14, 15, 33, 34, 43, 44, 46** and **47**. In regard to **claims 14, 15, 33** and **34**, page 10 of the Office Action presents an improper omnibus rejection which stipulates that CCP does not disclose and by its reliance on Ruckart stipulates that Dahm does not disclose the subject matter of these claims. However, as explained in the middle of page 20 of Amendment B, even Ruckart does not disclose or suggest the subject matter of these claims.

Clear Errors of the Final Rejection Highlighted by the Advisory Action

Lack of Motivation to Combine - With regard to arguments related to the lack of motivation to combine CCP with Dahm, the Office Action indicates that: "Examiner respectfully disagrees because on the first line under "pricing", CCP discloses our pricing is fair and competitive, followed by "you will be a loyal happy customer". Therefore, pricing plays an important role for customer's loyalty. One with ordinary skills in the art would modify CCP with Dahm to implement the competitive pricing plan of CCP to the customer loyalty system disclosed by Dahm." However, this is based on erroneous logic. The Office

Action concludes that pricing plays an important role for customer's loyalty. CCP discloses fair and competitive pricing. Accordingly, **the pricing issue is solved by CCP, alone.** Moreover, CCP believes their service and fair and competitive prices will make people loyal and happy customers. Accordingly, CCP is not concerned with "churn". Therefore, there is no motivation to attempt to combine aspects of the online churn reduction and loyalty system of Dahm with the price list of CCP. The system of Dahm identifies subscribers as being likely candidates for churning and provides them with special offers. Since CCP is a price list for an answering service and is not related to wireless or cellular service and/or the competitive environment thereof, **the customers of CCP are not likely to churn.** Accordingly, there is no motivation in the art to combine the churn reduction system of Dahm with the price list of CCP. Therefore, the assertion that there was motivation in the art at the time the invention was made to combine aspects of the churn reduction and loyalty system of Dahm with the price list of CCP represents **clear errors** of the Office Action.

With further reference to Dahm, the Advisory Action asserts that: --the citation of the six columns is necessary because they are the sections describing the entities (i.e., entities shown in Fig. 2A and Fig. 2B--). This appears to be a response to arguments presented on pages 22 and 23 of Amendment B, which point out that 37 CFR §1.104(C)(2) requires that "when a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable" and that if the Office does not find it practicable to designate which portion of Dahm discloses "means for managing subscribers account information" with any more specificity than column 6, line 49-column 9, line 51, Fig. 1, Fig. 2A and Fig. 2B, it is because Dahm does not actually disclose or suggest such means. It is respectfully submitted that the fact that the Advisory Action does not provide any additional specificity is a clear indication that the assertions of the Office Action in this regard are based on **clear errors**. It is respectfully submitted that Dahm is concerned with making offers to subscribers that the system of Dahm determines are likely to "churn" and Dahm does not disclose means for charging a first discounted billing rate for a first category of airtime consumed by a subscriber in excess of the first threshold airtime amount as recited in **claim 20**. Accordingly, Pre-Appeal Brief Review is respectfully requested.

Premature Finality - The finality of the rejections of February 6, 2008 are premature either because new rejections were not necessitated by Applicants' amendment or because the Office Action is not completely responsive, or for both reasons.

For example, in the First Office Action, **claim 15** was rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm. In the final Office Action, **claim 15** was rejected under 35 USC §103(a) as being unpatentable over CCP in view of Dahm and further in view of Ruckart. The Advisory Action asserts that this new grounds (Ruckart) was necessitated by Applicants' amendment to **claim 1**. However, Ruckart is not applied against

claim 1. Furthermore, Ruckart is not applied against **claim 15** for the subject matter that was included by amendment in **claim 1**. The assertions on page 10 of the Office Action, including the assertion that Ruckart discloses providing a greater discount if more expensive products are selected, is clearly directed at the recitation related to --higher cost subscription plans-- in **claim 15** because the Office Action, also on page 10, stipulates that Dahm fails to disclose determining a discounted billing rate based on a calling plan subscription cost. **Claim 15** was not amended. Accordingly, this new grounds of rejection of **claim 15** was not necessitated by Applicants' amendment. Instead, the new grounds of rejection was necessitated by the inadequacy of the original rejection of **claim 15**. The finality of the rejections in the Office Action of February 6, 2008 is premature and represents a **clear error** of the Office Action.

Further discussion of reasons why the finality of the Office Action is premature and errors of the Office Action related to incomplete responsiveness are presented on pages 15-18 of Amendment A and the attention of the reviewers is directed thereto.

Inappropriate Reference to *In re Keller*- The Office Action asserts that one cannot show nonobviousness by attacking references individually. However, it is respectfully submitted that the Applicants did not attack the references individually. Where arguments in support of a particular claim focus on a particular cited document, it is because the Office Action stipulates or implies a stipulation that the other documents do not disclose or suggest the subject matter of interest. Accordingly, a showing that the particular reference does not include the subject matter for which it is relied is a showing that the combination of references do not disclose or suggest that subject matter. In this regard, it is respectfully submitted that the Advisory Action relies on *In re Keller* instead of responding to the substance of particular arguments because those arguments are persuasive. Accordingly, the rejections that the Office intended to address with this reference to *In re Keller* represent **clear errors** of the Office Action.

In response to arguments that Ruckart does not disclose or suggest higher discounts for higher cost **subscription plans**, the Advisory Action indicates that the Examiner respectfully disagrees because Ruckart discloses "discount will be greater if more expensive products are selected". It is respectfully submitted that this assertion of the Advisory Action highlights **clear errors** of the Office Action. More expensive products are not higher cost **subscription** plans. Moreover, Applicants' arguments with regard to Ruckart are more extensive than implied by the characterization of the Advisory Action (see pages 19-20, 31-33 and 36-38 of Amendment B).

In response to the argument that Dahm does not disclose the means for performing the method of **claim 1**, the Advisory Action indicates that the Examiner respectfully disagrees because Dahm discloses network entities for managing billing accounts. However, means plus function language invokes 35 USC §112, sixth paragraph, and mere

disclosure of entities for managing billing accounts does not disclose or suggest the means for performing the method of **claim 1** disclosed in the present application and therefore to be construed as covered by the recitation apparently referred to by this portion of the Advisory Action in independent system **claim 20**.

Accordingly, whichever assertions of the Office Action this statement was intended to support, represent clear errors of the Office Action.

Additional Clear Errors of the Office Action - Clear errors of the Office Action are identified and discussed on pages 15-38 of Amendment B and the attention of the reviewers is directed thereto. In particular, the incomplete nature of the responsiveness of the Office Action and other reasons why the finality of the rejections is premature are presented on page 18 of Amendment B. Clear errors related to the citations to Whewell are summarized on pages 18 and 19. Clear errors related to the citations to Ruckart are outlined on pages 19 and 20. Clear errors related to the citations of CCP and Dahm are discussed generally on pages 20 and 21.

The Rejections - Clear errors with regard to the rejections of **claims 1** and **20** are discussed on pages 21-24. Clear errors regarding the rejection of **claims 2** and **21** and **claims 4** and **23** are discussed on pages 24 and 25. Clear errors with regard to the rejection of **claims 5, 6, 24** and **25** are discussed on page 25.

Clear errors with regard to the rejection of **claims 27** and **26** are discussed on page 26. Clear errors associated with the rejection of **claims 11, 12, 30** and **31** are discussed on pages 26-27. Clear errors relate to the rejection of **claims 13** and **32** are identified on page 27. Clear errors related to the rejection of **claim 16** are addressed on pages 27-28. Clear errors related to the rejections of **claims 17** and **18** and to the rejection of **claim 19** are discussed on page 29. Clear errors related to the rejection of **claims 3, 9, 22** and **28** as well as **claims 9** and **22** are addressed on page 30. Clear errors of the Office Action regarding the rejections of **claims 14, 15, 33** and **34** are identified and explained in detail on pages 31-33. Clear errors of the Office Action related to the rejections of **claims 33** and **34** are addressed on page 33. Clear errors related to the rejection of **claims 35** and **37-40** are discussed on pages 33-34. Clear errors in the rejection of **claim 42** are addressed on pages 34-35. Clear errors related to the rejection of **claim 36** are discussed on pages 35-36. Clear errors related to the rejections of **claims 43** and **44** are discussed on page 36. Discussion of clear errors related to the rejection of **claims 41** and **45** begin on page 36. Identification of clear errors in the asserted combination of four documents including Money, Dahm, CCP and Ruckart in the rejection of **claims 46** and **47** begins on page 37 and ends on page 38.

For the reasons presented herein and in Applicant's Amendment B, the final rejection of **claims 1-47** presented in the Office Action that was mailed February 6, 2008, are based on clear errors. Accordingly, Pre-Appeal Brief Review is respectfully requested.